

Wadsworth Brothers Construction (“Wadsworth”) asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge George's decision affirming the citation issued by the Utah Occupational Safety and Health Division (“UOSH”) against Wadsworth for violation of the Utah Occupational Safety and Health Act, Title 34A, Chapter 6, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-6-304.

BACKGROUND AND ISSUE PRESENTED

On October 2, 2000, UOSH cited Wadsworth for violation of workplace safety standards established by Labor Commission Rule 614-1-4.B pursuant to authority granted by §34A-6-202 of the Utah Occupational Safety and Health Act. Wadsworth contested the citation. Judge George conducted an evidentiary hearing in the matter on October 18, 2001, and then allowed the parties to submit written closing arguments. UOSH submitted its final argument on June 20, 2003. On July 3, 2003, Wadsworth moved to strike UOSH’s final argument as untimely, but also submitted additional argument in its own behalf.

On March 31, 2004, Judge George issued his decision in this matter. He denied Wadsworth’s motion to strike UOSH’s final argument and affirmed UOSH’s citation against Wadsworth. The decision also notified Wadsworth of its right to file an appeal within 30 days of the date of Judge George’s decision. Also on March 31, 2004, a copy of the decision was mailed to Wilford Beesley, Wadsworth’s attorney, at Mr. Beesley’s office address.

Fifty nine days later, on May 27, 2004, Mr. Beesley filed a motion for review on behalf of Wadsworth. As justification for the untimely filing of the motion for review, Mr. Beesley states that he permanently closed his law office on December 31, 2003, and arranged for the post office to forward his office mail to his residence. He was in California during the last three weeks of April, 2004, during which time his secretary regularly went to his residence and opened his mail. Although Mr. Beesley states that neither he nor his secretary saw Judge George’s decision when it arrived in the mail, he found the decision opened and sitting on a cabinet in his living room later, after he returned from California

DISCUSSION AND CONCLUSIONS OF LAW

The threshold question in this matter is whether Wadsworth’s motion for review is untimely, thereby depriving the Appeals Board of jurisdiction to consider its merits. "When a matter is outside the court's jurisdiction it retains only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah App.1989).

Section 63-46b-12 of the Utah Administrative Procedures allows a party dissatisfied with an ALJ’s decision 30 days from the date of that decision to file a motion for review. Unless such a motion for review is timely filed, or good cause exists for late filing, the ALJ’s decision is final and the Appeals Board has no jurisdiction to consider the merits of the motion for review. Maverik

Country Stores v. Industrial Commission, 860 P.2d 944, 950 (Utah App. 1993).

Wadsworth concedes that its motion for review was untimely. However, Wadsworth argues that the circumstances surrounding the issuance of Judge George's decision, and the delayed receipt of that decision by Mr. Beesley, constitute good cause for waiving the 30-day filing deadline. The Appeals Board disagrees. The record establishes that Judge George's decision was sent to the correct address of record and was actually received at Mr. Beesley's forwarding address, apparently in a timely fashion. For some unexplained reason, it was then mishandled or misplaced, but the responsibility for that must rest with Wadsworth. The Appeals Board does not consider such circumstances to constitute good cause for missing the jurisdictional time limit for filing a motion for review. The Appeals Board therefore denies Wadsworth's request to waive the 30-day filing period and concludes that it has no jurisdiction to consider the merits of Wadsworth's motion for review.

ORDER

The Appeals Board dismisses Wadsworth's motion for review as untimely. Judge George's decision remains in effect. It is so ordered.

Dated this 31st day of January, 2005.

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph E. Hatch